HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.Nos.5290 of 2003

Dated 8th day of August, 2007

Between:

S.Srinivasulu Reddy .. Petitioner

And

The Prohibition & Excise Superintendent,
Nellore ..
Respondent

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O R D E R:

This writ petition is filed seeking a mandamus to declare the action of the respondent in issuing Notice dated 5.3.2003 demanding the petitioner to pay a differential fee of Rs.87,000/-, as arbitrary and illegal.

The petitioner asserts that one K.V.Krishna Reddy got IL 24 licence on 30.3.1998 to sell Indian and Foreign Liquor in retail. During the Excise year 1998-99, he himself carried on business with name and style "M/s.Kavitha Wines". During the year 1999-2000, when K.V.Krishna Reddy made an application to the respondent, the name of the petitioner's brother S.Raja Sekhar Reddy was included in the licence as Co-licencee. When S. Raja Sekhar Reddy died in an accident on 10.4.1999, the petitioner's name was included as a Co-licencee. Subsequently, K.V.Krishna Reddy delicenced himself during the Excise year 1999-2000. However, the Excise Department collected transfer fee of Rs.1000/- at each of the points obviously treating inclusion or exclusion or succession. The licencee paid transfer fee of Rs.1000/-. Thus, the petitioner's name was renewed for the successive years namely 2000-2001, 2001-2002 and 2002-2003. Now, his grievance is that the respondent issued the impugned Notice alleging that the transfer fee at the rate of 10% of privilege fee is liable to be paid for causing inclusion or exclusion or succession of licencee and thereby called upon him to pay a sum of Rs.87,000/- as differential fee as per Rule 38 of A.P. Indian Liquor and Foreign Liquor Rules, 1970, in default, action would be initiated against him under Section 31(1)(b) of A.P. Excise Act.

Though the respondent was served with a notice, he has not

chosen to file counter affidavit.

The only contention advanced by the learned counsel for the petitioner is that the impugned Notice, which is in the nature of an order demanding the petitioner to pay the differential amount, was not preceded with any Show Cause Notice calling for his explanation, as such, the action of the respondent is in utter violation of principles of natural justice.

Of course, the learned Government Pleader for Excise has contended that that the petitioner, without exhausting the remedy of appeal before the Commissioner, has filed this writ petition. However, as the impugned Notice, which is in the nature of an order demanding the petitioner to pay the differential fee for inclusion and exclusion of a partner, was not preceded with any Show Cause Notice calling for his explanation, this Court is not inclined to direct the petitioner to approach the appellate authority.

Hence, this writ petition is allowed and the impugned Notice dated 5.3.2003 is set aside and the respondent-Prohibition and Excise Superintendent is directed to issue a Show Cause Notice to the petitioner calling for his explanation, and the respondent, after considering the objections that may be filed by the petitioner, may pass appropriate orders in accordance with law. No costs.

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08.08.2007

bcj